

## **8-3.000**

# **ENFORCEMENT OF CIVIL RIGHTS CRIMINAL STATUTES**

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### **8-3.010 Introduction**

The United States Attorney is responsible for the enforcement of criminal civil rights statutes in accordance with the procedures set forth below. The Criminal Section oversees the enforcement of the criminal civil rights statutes administered by the Civil Rights Division. The principal statutes are 18 U.S.C. § 241 (conspiracy to injure citizens in the exercise of federal rights); 18 U.S.C. § 242 (willful deprivations of federal rights under color of law); 18 U.S.C. § 245 (interference with federally protected activities); 18 U.S.C. § 247 (damage to religious property); 18 U.S.C. § 248 (Freedom of Access to Clinic Entrances); 42 U.S.C. § 3631 (interference with fair housing activities); 18 U.S.C. § 1581 (peonage); and 18 U.S.C. § 1584 (involuntary servitude).

A detailed description of the Criminal Section, an explanation of the various statutes, and sample forms, are included in the Civil Rights Resource Manual at 33 et seq.

### **8-3.100 Coordination of Activities**

The Civil Rights Division and the United States Attorneys' Offices (USAOs) will work as partners to ensure a vigorous national civil rights enforcement program. The purpose of this chapter is to provide guidance to the United States Attorneys and the Criminal Section of the Civil Rights Division in carrying out their responsibilities in the investigation and prosecution of violations of criminal civil rights statutes in a manner that (1) encourages initiative on the part of individual United States Attorneys and draws upon their litigation expertise and knowledge of the local community; and (2) utilizes the trial expertise and institutional knowledge of the Criminal Section of the Civil Rights Division. Cooperative prosecutions and investigations utilizing attorneys from both the Criminal Section and the USAOs can be particularly successful and can provide valuable benefits in the enforcement of these statutes. When it is appropriate for either the Civil Rights Division or a USAO to act

independently on a matter in a particular district, the office initiating the activity should ensure that the other office is notified in advance of the activity. Specifically, prior to initiating any significant activity in a district, the Civil Rights Division shall provide notice to the designated contact attorney for the USAO. Similarly, USAOs shall advise the Civil Rights Division of matters not already being monitored by the Civil Rights Division which appear likely to result in inquiries to the Civil Rights Division.

### **8-3.110 Initiation of FBI Investigations**

Absent emergency circumstances, the Civil Rights Division shall fax a copy of any initiating FBI investigative request to the designated point of contact for the United States Attorney in the relevant district simultaneously when the request is forwarded to FBI headquarters to allow for any input from the United States Attorney's Office (USAO) before FBI headquarters forwards the request to the field. Similarly, the USAO shall either call with the information or fax a copy of any initiating FBI investigative request to the Chief of the Criminal Section of the Civil Rights Division.

### **8-3.120 Staffing of Cases**

Subject to the general principles contained herein, either the Civil Rights Division or a United States Attorney's Office (USAO) may investigate and prosecute on its own any type of criminal civil rights violation.

At the outset of a criminal investigation initiated by a USAO (but in no event later than the commencement of the examination of witnesses before a grand jury), the United States Attorney shall advise the Civil Rights Division in writing of the new investigation. The notification should be by letter or electronic mail and contain the following information: (a) identity of the targets of the investigation; (b) the factual allegations to be investigated; (c) the statutes which may have been violated; (d) the United States Attorney's assessment of the significance of the case and whether the case is one of "national interest," as defined below; and (e) the United States Attorney's proposed staffing of the matter (including whether a Civil Rights Division attorney should be assigned to work directly on the matter). The United States Attorney will advise the Division as the case develops of new information relating to the United States Attorney's assessment of the case and whether it is one of "national interest."

The staffing proposal of the United States Attorney will be given deference by the Civil Rights Division. If the Civil Rights Division does not express disagreement with a staffing proposal by the United States Attorney within three business days, the proposal is deemed acceptable. The Assistant Attorney General of the Civil Rights Division retains the final and on-going authority to determine the staffing of any criminal civil rights matter.

### **8-3.130 Cases of National Interest**

A case is of "national interest" if it is a case that presents important public policy considerations; a novel issue of law; a case that because of peculiar facts and circumstances, may set important precedent; a case with simultaneous investigations in multiple districts (unless the United States Attorney's Office (USAO) in each district and the Civil Rights Division conclude that national interests are not involved); a case with international or foreign policy implications; an urgent or sensitive case; or a case that substantially affects the uniform application of the law. A case involving a violation of the federal criminal civil rights laws resulting in death is presumed to be a case of national interest. In a case of national interest, the Assistant Attorney General, in consultation with the United States Attorney, may require that the USAO and the Civil Rights Division participate jointly as co-counsel from the initiation of the investigation through prosecution, taking into consideration all of the circumstances, including the experience of the particular USAO and the efficient use of government resources. The Assistant Attorney General for Civil Rights shall have the ultimate authority to

determine whether a case is of "national interest", considering all relevant factors and in consultation with the United States Attorney.

### **8-3.140 Advance Notice/Prior Approvals of Indictments**

United States Attorneys need not obtain prior authorization by the Civil Rights Division to indict criminal civil rights cases, unless the case has been deemed by the Assistant Attorney General as a case of national interest or unless approval is required by statute. Prior to presenting any civil rights case for indictment, however, the United States Attorney shall provide written notification to the Civil Rights Division of the intention to seek an indictment or to file a felony information. This notification should occur at least 10 business days before the indictment will be presented to the grand jury, except in emergencies when time is of the essence. The notification should be accompanied by a copy of the proposed indictment and any existing prosecutive memorandum. United States Attorneys are encouraged to provide even earlier notice as a general practice in order to take full advantage of the expertise of the Civil Rights Division.

Even in those cases in which the United States Attorney need not obtain prior authorization to indict, if there exists a significant issue affecting the Department's enforcement of federal civil rights laws, then the Assistant Attorney General may exercise the ultimate authority to disapprove the prosecution.

If prior approval to indict a civil rights matter is required because the case has been deemed by the Assistant Attorney General to be a case of national interest or because approval is required by statute, the United States Attorney will provide to the Civil Rights Division a copy of the proposed indictment and any prosecutive memorandum at least 10 business days in advance of the time when the indictment will be presented to the grand jury. The Civil Rights Division will communicate its authorization decision within 10 business days of receipt of the proposed indictment, unless certification by ranking Department officials is required by law (Sections 245 and 247).

### **8-3.150 Declinations**

The United States Attorneys may decline cases in their offices by orally advising the FBI, which declination shall then be reflected in the investigative report submitted by the FBI.

In all cases resulting in death, the Civil Rights Division will continue to obtain the concurrence of the United States Attorney before closing any such case.

Ultimate declination authority in any case arising under the federal civil rights laws resides with the Assistant Attorney General for Civil Rights.

### **8-3.160 Appeals**

Appeals in civil rights cases are supervised by the Appellate Section of the Civil Rights Division. For United States Attorneys' responsibilities in the handling of criminal appeals. *See* USAM 2-3.210.

### **8-3.170 Cooperation with State Prosecutions**

Frequently, conduct which deprives persons of federally protected rights in violation of federal law also violates state law. In such cases, where state and local authorities undertake vigorous prosecution in state courts, it is Department policy to cooperate fully with the local prosecutor.

Any release of reports of investigation should be in accordance with 28 C.F.R. Part 16.

### **8-3.180 Subpoenas Issued to FBI Agents**

Occasionally FBI agents are subpoenaed to appear to testify in local proceedings or even in federal proceedings to which the United States is not a party. Quite often the subpoena is issued on behalf of a state defendant in a criminal case seeking to obtain the results of an FBI investigation into alleged police mistreatment of the defendant. The Department's policy is to resist such a subpoena except where the FBI agent can give eyewitness testimony like any other witness. *See* 28 C.F.R., Part 16.

When subpoenas are issued to Department of Justice attorneys or agents for either testimony or records in any civil rights matter, the Assistant Attorney General has ultimate authority to determine the Department's position regarding compliance with the subpoena. Any motions to quash or related proceedings should be handled by the United States Attorney's Office in consultation with the Civil Rights Division. *See* the Civil Rights Resource Manual at 48.

### **8-3.190 Notification to Parties of Closing File**

The Criminal Section has developed a procedure for routine notification, at the time a file is closed by the Criminal Section, of sending computer-generated form letters to victims, complainants, subjects and heads of agencies in all investigations of police misconduct. Copies of the form letters are included in the Civil Rights Resource Manual at 37 et seq. No letters are sent in racial violence, FACE, or slavery matters. It is important that United States Attorneys advise the Criminal Section as soon as possible of any matters involving police misconduct which they believe may have prosecutive merit, not more than 30 days after receipt of the final FBI report in the matter. Notice letters will not be sent in any matter in which a United States Attorney's Office has expressed an interest in prosecution or further investigation.

### **8-3.195 Production or Disclosure in Federal And State Proceedings of Material or Information in Civil Rights Division Files**

General procedures to be followed by Department of Justice employees in responding to demands for Department information in federal and state proceedings are contained in 28 C.F.R. Part 16. The Division's specific procedures are set forth in the Civil Rights Resource Manual at 48.